



Department of Justice

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JUSTICE DEPARTMENT CLEARS WAY FOR CABLE TELEVISION JOINT PURCHASING CONSORTIUM

WASHINGTON, D.C. – The Department of Justice today announced that it would not challenge proposed changes in the procedures for a consortium of primarily independent and smaller owners of cable television systems to jointly purchase national cable network programming.

The Department's position was stated in a business review letter from R. Hewitt Pate, Assistant Attorney General for the Antitrust Division, to counsel for the consortium, The National Cable Television Cooperative Inc. (NCTC). NCTC was formed in 1985 as the Mid-America National Cable Television Cooperative Inc., primarily for the purpose of achieving efficiencies in the purchase of cable programming. At that time, the Department issued a favorable business review for the consortium as it was then envisioned.

NCTC has stated that modification of its original procedures could result in greater efficiencies for its members. Currently, NCTC, unlike a large multiple system operator, cannot guarantee any volume of participation in a master contract, as its members decide whether to participate only after the contract has been negotiated. Members who choose to participate in the modified joint purchasing program may be required to commit in advance to purchase programming at price levels they identify.

In the business review letter released today, Pate stated that "NCTC's proposed procedures will not appreciably facilitate price collusion among NCTC's members in the sale of

multichannel video programming distribution services. With respect to the overwhelming majority of NCTC member cable systems, there is no danger that NCTC's procedures will facilitate retail price collusion because those cable systems do not compete with each other in the sale of MVPD services to consumers." Moreover, "[t]o the extent the contemplated changes to the joint purchasing procedures result in lower programming costs to members that are passed on to consumers, the proposed conduct could have procompetitive effects."

The Department's letter states that the modified joint purchasing program likely will not be anticompetitive for several reasons. NCTC's participating members serve a small percentage of MVPD subscribers, and the members' purchases of national cable programming almost certainly would not be significant enough to raise monopsony concerns. Collusion is unlikely because the vast majority of NCTC's members do not compete for subscribers. Due to factors explained in the Department's letter, the likelihood that collusion will occur in the overlap areas served by the remaining NCTC members is also small. The limited purchasing commitment included in the new program does not substantially change the voluntary character of participation in the program. Members still may choose not to commit to any contract, although they effectively could be required to make that choice earlier in the negotiation process.

Under the Department's business review procedure, an organization may submit a proposed action to the Antitrust Division and receive a statement as to whether the Division will challenge the action under the antitrust laws.

A file containing the business review request and the Department's response may be examined in the Antitrust Documents Group of the Antitrust Division, Suite 215, Liberty Place, 325 7th Street, N.W., Department of Justice, Washington, D.C. 20530. After a 30-day waiting period, any documents supporting the business review will be added to the file, unless a basis for

their exclusion for reasons of confidentiality has been established pursuant to Paragraph 10(c) of the Business Review Procedure, 28 C.F.R. § 50.6.

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